

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

MOSAIC PHOSPHATES COMPANY

AI # 2425

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT
LA. R.S. 30:2001, ET SEQ.

* Settlement Tracking No.
* SA-AE-06-0034
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* Enforcement Tracking No.
* AE-CN-05-0130
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SETTLEMENT

The following Settlement is hereby agreed to between Mosaic Phosphates Company ("Respondent") and the Department of Environmental Quality ("DEQ" or "the Department"), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. ("the Act").

I

Respondent is a corporation who owns and/or operates a fertilizer manufacturing facility located at 9959 Louisiana Highway 18 in St. James, St. James Parish, Louisiana ("the Facility").

II

On June 16, 2005, the Department issued a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. AE-CN-05-0130, to Respondent which was based upon the following findings of fact:

The Respondent owns and/or operates the Faustina Plant, a fertilizer manufacturing facility, located at 9959 Louisiana Highway 18 in St. James, St. James Parish, Louisiana. The

facility currently operates under Air Permit No. 2560-00021-02 issued on October 16, 1996. On March 17, 2000, and August 22, 2003, the Department issued Administrative Amendments to Air Permit No. 2560-00021-02. The Respondent submitted an application for an initial Title V permit dated October 12, 1996, that was received by the Department on or about October 15, 1996.

At Respondent's request, the Department met with Respondent's representatives on June 10, 2005. During the meeting, the Respondent informed the Department that, in connection with preparing updates to the initial Title V permit application to address questions raised by the Department's Permit Division staff, the Respondent had undertaken an in-depth review by an outside consultant concerning compliance with Air Permit No. 2560-00021-02 and with applicable Louisiana State and Federal Air Quality Regulations. The Respondent reported that certain air emission sources at the facility were not accurately permitted and that potential noncompliance with certain applicable requirements had been discovered. The Respondent also informed the Department, during the June 10, 2005, meeting, that following further review, the Respondent would provide to the Department a complete list of any air regulatory compliance issues discovered.

On June 14, 2005, a file review of the facility was conducted to determine the degree of compliance with the Act and the Air Quality Regulations.

The following violations were noted during the course of the review:

- A. In a letter dated August 23, 1999, the Department was notified that the Urea Plant at the facility was temporarily shutdown. In a letter dated December 4, 2001, the Department was notified that the Urea Plant at the facility was permanently shutdown. According to the Respondent's letter dated June 13, 2005, the shutdown of the Urea Plant reportedly caused an approximate 60% increase in emissions from the facility's Carbon Dioxide

(CO₂) Regeneration Vent (Emission Source No. 5-68). However, the Respondent failed to modify Air Permit No. 2560-00021-02 to obtain authority to increase the facility's emission limit from its CO₂ Regeneration Vent to reconcile these increased emissions. In a meeting on June 10, 2005, the Respondent notified the Department that it may have exceeded the permitted limits of total volatile organic compounds (VOCs) and methanol emitted from its CO₂ Regeneration Vent established in Air Permit No. 2560-00021-02. Each of the Respondent's failures to comply with all terms and conditions of Air Permit No. 2560-00021-02 is a violation of LAC 33:III.501.C.4 and Sections 2057(A)(1) and 2057(A)(2) of the Act.

- B. According to correspondence dated June 16, 2005, the Respondent submitted its initial notification dated September 24, 1999, to inform the U.S. EPA that the Phosphoric Acid Plant at the facility was subject to the Maximum Achievable Control Technology (MACT) standards. This notification was required pursuant to 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants, as noted in 40 CFR 63.607(a), which stipulates compliance with the notification requirements of 40 CFR 63.9. However, the Respondent later rescinded the notification, based on the conviction that the provisions of 40 CFR 63.600(c) exclude a phosphoric acid manufacturing plant that is not, by itself, a major source of hazardous air pollutant (HAP) emissions. The Respondent based this decision on the understanding that the facility's Phosphoric Acid Plant does not have emissions in excess of 10 tons per year of any HAP or 25 tons per year of any combination of HAPs in the aggregate to make it a major source by itself. However, the facility's total emissions of methanol, a HAP, from the entire facility are permitted to exceed 25 tons per year. As a result, the Department considers Subpart AA to be applicable to the facility's Phosphoric Acid Plant because this plant along with the rest of the facility is a group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs, making it a major source as defined in 40 CFR 63.2, as referred to in 40 CFR 63.600(c). The Respondent indicated that the Phosphoric Acid Plant has been idle since 1999, although Respondent reportedly maintains the plant and continues to pay all applicable annual permit fees. The Respondent failed to comply with the requirement to conduct the

performance test pursuant to 40 CFR 63.606 prior to the compliance date of June 10, 2002, and once per annum thereafter. Each failure to conduct these tests is a violation of 40 CFR 63.606, which language has been adopted as a Louisiana Regulation in LAC 33:III.5122, and Section 2057(A)(2) of the Act.

- C. According to correspondence dated June 16, 2005, the Respondent submitted its initial notification dated September 24, 1999, to inform the United States Environmental Protection Agency (U.S. EPA) that the facility's Granulation Trains (Trains A, B, and C) were subject to MACT standards. This notification was required pursuant to 40 CFR Part 63, Subpart BB National Emission Standards for HAPs from Phosphate Fertilizer Production Plants, as noted in 40 CFR 63.627(a), which stipulates compliance with the notification requirements of 40 CFR 63.9. The Respondent conducted performance testing to demonstrate compliance with the Subpart BB standards in April and May 2002, prior to the compliance date of June 10, 2002, as required by 40 CFR 63.626. However, the Respondent later informed the Department that the Granulation Trains were not subject to Subpart BB and requested that the Department cease review of its performance tests. The Respondent indicated that it believes that the provisions of 40 CFR 63.620(c) exclude a phosphate fertilizer plant that is not, by itself, a major source of HAP emissions, even if located at a major stationary source that was a major source of HAP emissions. The Respondent based this decision on the understanding that the facility's Granulation Trains do not have emissions in excess of 10 tons per year of any HAP or 25 tons per year of any combination of HAPs in the aggregate. However, the facility's total emissions of methanol, a HAP, from the stationary source are permitted to exceed 25 tons per year. As a result, the Department considers Subpart BB to be applicable to the facility's Granulation Trains because this plant along with the rest of the facility is a group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs, making it a major source as defined in 40 CFR 63.2, as referred to in 40 CFR 63.620(c). The Respondent failed to comply with the operating requirements of 40 CFR 63.624, the monitoring requirements of 40 CFR 63.625, the annual testing requirements of 40 CFR 63.626(a)(2), and the notification, recordkeeping, and reporting requirements of 40 CFR 63.627. Each failure to comply with these operating, monitoring, testing, and notification, recordkeeping, and reporting requirements is a violation of 40 CFR 63.624, 40 CFR 63.625, 40 CFR 63.626(a)(2) and 40 CFR 63.627, respectively, which language has been adopted as a Louisiana Regulation in LAC 33:III.5122, and Section 2057(A)(2) of the Act.

III

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

IV

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of THIRTY-FIVE THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$35,300.00) of which Four Hundred Eighty-Four and 05/100 Dollars (\$484.05) represents DEQ's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to DEQ as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

V

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Order and Notice of Potential Penalty and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

VI

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such

review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

VII

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act.

VIII

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in St. James Parish, Louisiana. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

IX

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Darryl Serio, Office of Management and

Finance, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

X

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XI

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

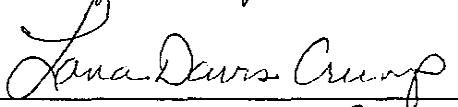
MOSAIC PHOSPHATES COMPANY

BY: 
(Signature)

ROBERT A. DENNIS
(Printed)

TITLE: Plant Manager


THUS DONE AND SIGNED in duplicate original before me this 13th day of November, 20 06, at St James, Louisiana


NOTARY PUBLIC (ID # 23707)


Lana Davis Crump
(Printed)

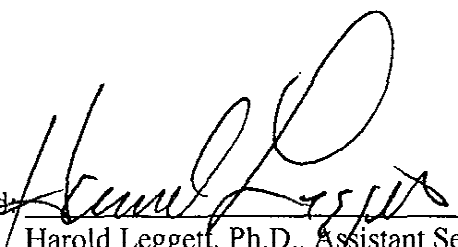
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Mike D. McDaniel, Ph.D., Secretary

BY: 
Harold Leggett, Ph.D., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 5th day of April, 20 07, at Baton Rouge, Louisiana.


NOTARY PUBLIC (ID # 20901)
Ted K. Proyle, Jr.
(Printed)

Approved: 
Harold Leggett, Ph.D., Assistant Secretary